

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 16, 2012

Elisabeth A. Shumaker
Clerk of Court

GEORGE JAMES,

Plaintiff - Appellant,

v.

CHERYL WADAS, et al.,

Defendants - Appellees.

No. 12-8076
(D.C. No. 2:11-CV-00368-ABJ)

ORDER

This matter is before the court following the opening of this appeal. Pro se Plaintiff George James appeals the district court's September 13, 2012 order. Upon initial review, we have identified a potential jurisdictional defect that may deprive this court of authority to consider the appeal. Accordingly, this appeal is being considered for summary disposition. 10th Cir. R. 27.2(B).

The order being appealed granted summary judgment to two of the three named defendants. The court also entered a "judgment" as to those two defendants. The case has continued as to the remaining defendant, with deadlines still outstanding.

But the district court has not entered a final judgment resolving all claims against all parties. *See* 28 U.S.C. § 1291; Fed. R. Civ. P. 58. Further, neither the order granting summary judgment nor the separate judgment entered on September 13, 2012 address the

required factors stated in *Stockman's Water Co., LLC v. Vaca Partners, L.P.*, 425 F.3d 1263, 1265 (10th Cir. 2005). Therefore, the judgment does not appear to satisfy this court's requirements for a Federal Rule of Civil Procedure 54(b) partial final judgment. Additionally, the order being appealed does not seem to fall into a recognized exception to the final judgment rule. *See, e.g.*, 28 U.S.C. § 1292(a).

Because the order being appealed is not final or otherwise immediately appealable, it appears that we lack jurisdiction to consider the appeal at this time.

Within 21 days of the date of this order, we direct the appellant to take one of the following actions:

1. File in this court copy of a separate district court order directing that partial final judgment be entered pursuant to Federal Rule of Civil Procedure 54(b) and that complies with the requirements stated in *Stockman's Water Co., LLC v. Vaca Partners, L.P.*, 425 F.3d 1263, 1265 (10th Cir. 2005); OR
2. File in this court a copy of a district court final judgment expressly resolving all remaining claims against all remaining parties, *see Jackson v. Volvo Trucks N. Am., Inc.*, 462 F.3d 1234, 1238 (10th Cir. 2006); OR
3. File a voluntary dismissal of this appeal under Federal Rule of Appellate Procedure 42(b).

If the appellant elects to do nothing, this court may dismiss the appeal without further notice for lack of prosecution. *See Lewis*, 850 F.2d at 645-46; 10th Cir. R. 42.1.

Finally, briefing on the merits is TOLLED pending further written order of this court. *See* 10th Cir. R. 27.2(C).

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script that reads "Lara Smith".

by: Lara Smith
Counsel to the Clerk